

**Illinois Health Information Exchange
Legal Task Force
Behavioral Health Legal Workgroup Meeting
December 13, 2010
Meeting Notes**

In Person Attendees

Laurel Fleming, Northwestern Medical Faculty Foundation
Jill Wolowitz, Blue Cross, Blue Shield
Rob Connor, Illinois Department of Human Services
Joe Monahan, Monahan & Cohen

Office of Health Information Technology

David Kim
Saroni Lasker
Mark Chudzinski (by phone)

Attended by Phone

Bernadette Broccolo, McDermott, Will & Emery
Anne Sayvetz, Northwest Community Hospital
Wendy Rubas, Central DuPage Hospital
Randy Malan, DHS

Laurel Fleming opened the meeting at 10:00 AM. The meeting was hosted by OHIT at the J.R. Thompson Center, Downtown Chicago, conference room 9-036, with a telephone conference call-in number. It was noted that notice of the meeting and the agenda were posted on the OHIT website and at the Chicago meeting location no later than 48 hours prior to the meeting. Roll was taken, and the ability of those attending by telephone to hear and participate was confirmed.

Laurel and Wendy Rubas welcomed the team to the first meeting of the Behavioral Health Legal Workgroup. Wendy asked Mark Chudzinski of OHIT to explain the Illinois Health Information Exchange (“HIE”) and how behavioral health fits into the exchange. Mark explained that the State of Illinois is committed to the development and implementation of a state-wide health information exchange in order to: improve health outcomes; achieve better care coordination among providers; reduce medical errors; reduce health disparities; and control health care costs. He recognized that behavioral health records pose a special issue because of the nature of the information contained in the records. Bernadette Broccolo addressed the passage of the law that created the Illinois HIE Authority. In creating the Authority and moving toward a statewide HIE, there was a realization that current state laws were barriers to HIE implementation. Currently, the Directors of the Authority have yet to be appointed. Mark and Bernadette indicated that the purpose of the Behavioral Health Legal Workgroup is to produce a whitepaper detailing the barriers in implementing a HIE and possible solutions.

Mark clarified that the workgroup is to seek expertise of legal professionals in health law field and that the process will be vendor neutral. The group’s role will be advisory and will have no role in procurement.

Mark continued to give a description of the Illinois HIE. It is an “HIE of HIEs,” meaning that it facilitates the combination of smaller, local and regional health information exchanges. The HIE is pointer system with a Master Patient Index and a Record Locator Service. There is no central repository of health information. Initially, health care providers will provide information through the HIE. Eventually, there will be a nationwide HIE, “NHIN” that will provide a means of transferring electronic health information across the country. It is the intention that health care providers will adopt and exchange electronic health records (“EHRs”) to receive meaningful use incentive payments from Medicare and Medicaid. While inpatient behavioral health and substance abuse facilities cannot access meaningful use incentives, outpatient providers (e.g. psychiatrists) can qualify for the incentive program.

Laurel then continued to map the strategy of the workgroup. As an initial matter, she sought to confirm her understanding that the HIE was designed to exchange information for purposes of treatment, payment, and health care operations (“TPO”), as well as to facilitate research, all as defined in HIPAA. Bernadette confirmed this. Laurel asked if “health care operations” would be limited to the first two prongs of the HIPAA definition: quality and peer review. Bernadette stated that the group should interpret health care operations more broadly and assume that uses of the HIE would encompass the entire definition of health care operations within HIPAA.

She then referred to a draft “Behavioral Health Legal Work Group Analysis Worksheet” (“Worksheet”) which she had disseminated and suggested that the document was a starting point for structuring the workgroup’s review of law. Laurel suggested, as a means to focus the group and as reflected in the Worksheet, to divide the analysis by purposes: treatment, payment, and health care operations, all as defined within HIPAA. She also suggested that, because another workgroup was examining research-related issues, references to research be noted and shared with the research workgroup. She will add this concept to the Worksheet. However, recognizing that state law may include internal quality studies (which are “health care operations” per HIPAA) within the concept of research, care must be taken to examine state law with respect to all health care operations. The group concurred with the suggested approach.

The group noted that it is important to also note any references within state laws to restrictions on subsequent disclosures. Laurel will also add this to the Worksheet.

Laurel asked how information will flow through the HIE to support payment. Bernadette suggested that the HIE might be used in the performance of utilization management, preventing Medicare/Medicaid fraud, and processing payment authorizations.

The group next discussed logistical issues. Wendy Rubas focused the group on identifying and bringing new members into the group, fleshing out the mission/charter, dividing the work, using the Worksheet created by Laurel as a framework to work analyze the issues, and identifying best practices in other states.

With respect to identifying potential new members, the group suggested looking for people who have a stake in the HIE such as an Illinois professional organization representing psychiatrists or psychologists; mental health advocates; and attorneys that specialize in community mental

health. In addition, it was suggested that the group include representatives from entities that might be opposed to including behavioral health information in the HIE. Several recommended the inclusion of a specific representative from Thresholds, a community mental health provider. Wendy offered to contact the representative from Thresholds. Laurel offered to identify and contact individuals from a mental health professional association (perhaps the Illinois or American Psychiatric Association). Wendy noted that she had already planned to reach out to the advocacy group, Mental Health America of Illinois and would ask for assistance from Mark Hyerman to do so.

As for the charter, the group tried to narrow down its focus. The group concurred with respect to, and Bernadette also supported, not analyzing use for “secondary purposes” (e.g., law enforcement). Accordingly, the group will not look at FOID or criminal enforcement issues and not analyze the Firearm Owners Identification Card Act, 430 ILCS 65/4(2), (3), (8). Laurel asked how this related to HIPAA’s 512 exceptions. Recognizing that the scope would become entirely too large if 512 exceptions were each addressed, the group agreed to simply note references within state law to HIPAA 512 exceptions, but not to conduct an analysis. Laurel will make this change in the draft Worksheet.

The group discussed some technological fixes to improve security and confidentiality. They will assume that any transmission of health information will involve encryption. Jill Wolowitz suggested that it would be helpful if someone with a technical understanding of the HIE would brief them on the technical issues and she offered to follow up with individuals from BCBS that are involved with HIE technical matters. Randy Malan inquired if it was possible to de-identify drug information to track side-effects and pandemics. Bernadette stated that we should assume that de-identification is possible. However, she asked the group, in conducting its analysis, to analyze “in the alternative” (i.e. first analyze a situation assuming that a technology would be available and then re-analyze assuming that the technology would not be available). Bernadette also asked if the group could identify helpful technological capabilities. Wendy offered to put together a list of technological solutions, as well as guiding principles identified by the group, to which the group could refer.

The group discussed the structure of many provider EMRs, noting that behavioral health information may, or may not, be segregated from the rest of the record. Bernadette suggested that, once again, the group analyze laws in the alternative with respect to information segregation.

The meeting ended with the taskforce dividing up into subgroups. One subgroup will look at licensing statutes listed in the materials previously distributed (i.e. licensing of psychologist, social worker, family therapist, and professional counselor). Ann Sayvetz recommended that this subgroup also review the licensure acts for physicians, nurse anesthetists, physician assistants, and pharmacists. Members of this subgroup will be: Sheila Orr, Wendy Rubas, and Randy Malan (on both). The other subgroup will analyze the Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/3,5. Members of this subgroup will include: Laurel Fleming, Rob Connor, Mark Heyrman, Randy Malan (on both), Jill Wolowitz, Bruce Fisher, and Joe Monahan. Jill will review the Act from a payment perspective. Wendy recommended that the participants from professional associations (yet to be determined)

and the legal intern be assigned to investigate best practices and how other states may be addressing behavioral health information in the establishment of an HIE.

The group discussed meeting the end of January to discuss their preliminary analysis so that the timelines established by the Executive Committee could be met.

Laurel then asked for any public comments. There was no public comment offered in response to Laurel's invitation for public comment.

The meeting was adjourned at 11:50 AM.